

Amendment and Response  
Applicants: Robert A. MacDonald et al.  
Serial No.: 09/904,038

Attorney Docket: KEY1025US

### REMARKS

Claim 5 has been amended above to correct informalities. The amendments to the claims add no new matter.

Claims 1 to 37 are pending.

For the convenience of the Examiner, Applicants' remarks herein are set forth under appropriate subheadings.

#### Information Disclosure Statement

The Information Disclosure Statement filed on July 29, 2002 was said to fail to comply with the provisions of 37 C.F.R. § 1.97 and § 1.98 and with M.P.E.P. § 609. Applicants wish to bring related co-pending application Serial No. 09/904,037 to the Examiner's attention due to the presence of related subject matter. 37 C.F.R. § 1.98(d) requires that any Information Disclosure Statement include a copy of any U.S. application listed in the IDS.

#### Double Patenting Rejection

The Examiner rejected claims 15 and 34 under the judicially created doctrine of obviousness-type double patenting over claims 5, 16, and 19 of U.S. Serial No. 09/904,037, filed on even date herewith. Applicants assume that this rejection is a provisional rejection, because U.S. Serial No. 09/904,037 has not yet issued as a patent.

Applicants respectfully traverse this double patenting rejection, however, Applicants will file a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c) when all claims are allowed.

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Objections to claims

Claims 5 and 13 were objected to because of various informalities.

Claim 5 has been amended above to recite that the wall comprises blocks having three different block widths.

As to the objection of claim 13, Applicants respectfully traverse this objection and point out that antecedent basis to "the block body" is at line 8 in claim 13.

Accordingly, Applicants respectfully request that these objections to the claims be withdrawn.

Claim rejections under 35 U.S.C. § 102

The Examiner rejected claim 13 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,816,749 (Bailey).

Applicants respectfully traverse this rejection of the claims.

Bailey describes a modular wall block system in which the blocks can be used in a vertically aligned or a vertically staggered orientation. Bailey's blocks have grooves that can engage projections, thus aligning the blocks in the desired orientation. Bailey's blocks have a generally planar front face that is used to form the front face of the wall and an opposing rear wall or face that faces the back of the wall.

Bailey does not teach the present claimed invention, in which, as recited in claim 13, the block body is configured so that the front surface of a wall is formed of the first faces of a portion of the multiple wall blocks and the second faces of others of the multiple wall blocks. On the contrary, Bailey discloses blocks which have a front face (12) and a rear wall (18). These blocks are used to form a wall having a front surface formed only of the front faces of the blocks (see FIG. 3).

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A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. The claims of the present invention clearly are not anticipated by Bailey, who does not teach the required elements of the present invention.

Accordingly, Applicants respectfully request that the rejection of claim 13 under 35 U.S.C. § 102(b) be withdrawn.

Claim rejections under 35 U.S.C. § 103

The Examiner rejected claims 1 to 14, 16 to 33, and 35 to 37 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,149,352 (MacDonald) in view of Japanese Patent No. 10,280,444.

Applicants respectfully traverse this rejection of the claims.

MacDonald describes and illustrates a block which is provided with a channel, spanning at least a portion of the width of the block, that is on the lower surface of the block and dimensioned to receive the head of a pin placed in a block on a lower course in a wall. (Column 8, lines 2 to 9) Geogrids may be used with MacDonald's block and held in place by means of pins, placed in the pin holes on the upper surface of the blocks. (Column 11, lines 43 to 48).

Japanese Patent No. 10,280,444 appears to describe blocks that can be produced by splitting a molded block unit, thus forming a textured and angled front surface (reverse side). The blocks have a core that extends through the block body. The drawings show the blocks stacked in a running bond arrangement. Figures 12 and 14 appear to indicate that this stacking arrangement permits the use of core fill or other generally vertically aligned reinforcement material, such as rebar. That is, the sides of two adjacent blocks in an upper course coincide with a core of one block in a lower course. Thus, core fill or rebar can be placed through the cores, thus reinforcing the wall.

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Japanese Patent No. 10,280,444 does not appear to be particularly relevant to the present invention. First, there is no reason to combine these two references. MacDonald does not suggest using a channel or groove in the top surface of a block for the purposes of receiving a horizontal reinforcement member. Further there is no motivation to make this combination since MacDonald specifically discloses both a pinning system using pin receiving apertures and a channel for the purpose of aligning and holding in position one course of blocks to an adjacent course of blocks (FIGS. 5A and 5B). Second, even if one were somehow motivated to combine these references, the combination would interfere with the block connection system used by MacDonald. Specifically, MacDonald discloses a system which uses two sets of three pin receiving apertures in each block which are used with a shouldered pin accommodated in a channel on the bottom of a block in the next upper course. By selecting which of three apertures into which the pin is place, the amount of setback from course to course can be selected. If the blocks of MacDonald were combined with the large channels of the Japanese reference, the pin attachment system of MacDonald would not function in its intended manner.

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive to support the combination. That the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

Neither reference, taken alone or together, suggest the block of the present invention, as claimed in claims 1 to 14, 16 to 33, and 35 to 37.

Accordingly, Applicants respectfully request that the rejection of claims 1 to 14, 16 to 33, and 35 to 37 under 35 U.S.C. § 103(a) be withdrawn.

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The Examiner rejected claims 15 and 34 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,019,550 (Wrigley et al.) in view of U.S. Patent No. 5,417,523 (Scales).

Applicants respectfully traverse this rejection of the claims.

Wrigley et al. show one channel on the upper surface of the block adapted to receive a connector for a geogrid. Scales show blocks having two channels on the upper surface of the blocks; one of these channels is able to receive a connector. Neither Wrigley et al. nor Scales, taken together or alone, show the block of the present invention, as recited in claims 15 and 34. In claims 15 and 34, a channel in the lower surface of a block receives the geogrid connector. Further, claims 15 and 34 both require that a first channel in the lower surface of a block receives a pin extending from the upper surface of a block in the lower course. There is no such corresponding channel in Wrigley et al.'s blocks, and there is no teaching of a pin connection system in Scales.

Neither reference teaches the wall system of claim 15 or the method of constructing a wall as recited in claim 34. The Examiner has chosen various elements from these two references, but there is no teaching in either reference of the present invention, as claimed in claims 15 and 34, nor any particular reason to combine these two references.

Accordingly, Applicants respectfully request that the rejection of 15 and 34 under 35 U.S.C. § 103(a) be withdrawn.

In view of Applicants' remarks, the claims are believed to be in condition for allowance. Reconsideration, withdrawal of the rejections, and passage of the case to issue is respectfully requested.

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If any additional fees are due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 16-2312. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

Date: 2/6/03

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**ATTACHMENT TO AMENDMENT AND RESPONSE**  
**SHOWING MARKED UP COPY OF THE CLAIMS**

5. (Amended) The wall of claim 1 further wherein the width of the blocks is defined by the first face of the blocks and wherein the [blocks] wall comprises blocks [of] having three different block widths.